

Senate Bill No. 162

CHAPTER 1002

An act to add Sections 17210, 17210.1, and 17213.1 to, the Education Code, relating to school facilities.

[Approved by Governor October 10, 1999. Filed
with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 162, Escutia. School facilities: contamination.

Under the Leroy F. Greene School Facilities Act of 1998, an eligible school district may receive funding for new construction of school facilities.

Existing law prohibits the governing board of a school district from approving a project involving the acquisition of a schoolsite or the construction of a school by the school district unless specified actions are taken with regard to potential contamination of the site, including a determination by the lead agency, as defined, that the property purchased or to be built upon is not the site of a current or former hazardous waste disposal site or solid waste disposal site, or a hazardous substance release site.

This bill would provide that, as a condition of receiving funding under the Leroy F. Greene School Facilities Act of 1998, the governing board of a school district is prohibited from approving the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, from proceeding with the construction of a project, unless the governing board causes certain environmental assessments to be conducted that are reviewed and approved by the Department of Toxic Substances Control.

This bill would require the school district to reimburse the Department of Toxic Substances Control for all of its response costs and would provide that these costs may be reimbursed under the Leroy F. Greene School Facilities Act of 1998.

This bill would provide that a school district is not liable in any action filed against the district for making a preliminary endangerment assessment available for public review.

This bill would provide that the Carpenter-Presley-Tanner Hazardous Substance Account Act applies to schoolsites of school districts electing to receive state funds where naturally occurring hazardous materials are present, regardless of whether there has been a release of a hazardous material.

This bill would provide that it would not become operative unless and until AB 387 is chaptered and becomes operative.

The people of the State of California do enact as follows:

SECTION 1. Section 17210 is added to Chapter 1 (commencing with Section 17210) of Part 10.5 of the Education Code, to read:

17210. As used in this article, the following terms have the following meanings:

(a) “Administering agency” means any agency designated pursuant to Section 25502 of the Health and Safety Code.

(b) “Environmental assessor” means a class II environmental assessor registered by the Office of Environmental Health Hazard Assessment pursuant to Chapter 6.98 (commencing with Section 25570) of Division 20 of the Health and Safety Code or a licensed hazardous substance contractor certified pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code. A licensed hazardous substance contractor shall hold the equivalent of a degree from an accredited public or private college or university or from a private postsecondary educational institution approved by the Bureau for Private Postsecondary and Vocational Education with at least 60 units in environmental, biological, chemical, physical, or soil science; engineering; geology; environmental or public health; or a directly related science field. In addition, a contractor who conducts Phase I environmental assessments shall have a least two years experience in the preparation of those assessments and a contractor who conducts a preliminary endangerment assessment shall have at least three years experience in conducting those assessments.

(c) “Handle” has the meaning the term is given in Article 1 (commencing with Section 25500) of Chapter 6.95 of Division 20 of the Health and Safety Code.

(d) “Hazardous air emissions” means emissions into the ambient air of air contaminants that have been identified as a toxic air contaminant by the State Air Resources Board or by the air pollution control officer for the jurisdiction in which the project is located. As determined by the air pollution control officer, hazardous air emissions also means emissions into the ambient air from any substance identified in subdivisions (a) to (f), inclusive, of Section 44321 of the Health and Safety Code.

(e) “Hazardous material” has the meaning the term is given in subdivision (d) of Section 25260 of the Health and Safety Code.

(f) “Operation and maintenance,” “removal action work plan,” “respond,” “response,” “response action” and “site” have the meanings those terms are given in Article 2 (commencing with Section 25310) of the state act.

(g) “Phase I environmental assessment” means a preliminary assessment of a property to determine whether there has been or may have been a release of a hazardous material, or whether a naturally occurring hazardous material is present, based on



reasonably available information about the property and the area in its vicinity. A Phase I environmental assessment may include, but is not limited to, a review of public and private records of current and historical land uses, prior releases of a hazardous material, data base searches, review of relevant files of federal, state, and local agencies, visual and other surveys of the property, review of historical aerial photographs of the property and the area in its vicinity, interviews with current and previous owners and operators, and review of regulatory correspondence and environmental reports. Sampling or testing is not required as part of the Phase I environmental assessment.

(h) “Preliminary endangerment assessment” means an activity that is performed to determine whether current or past hazardous material management practices or waste management practices have resulted in a release or threatened release of hazardous materials, or whether naturally occurring hazardous materials are present, which pose a threat to children’s health, children’s learning abilities, public health or the environment. A preliminary endangerment assessment requires sampling and analysis of a site, a preliminary determination of the type and extent of hazardous material contamination of the site, and a preliminary evaluation of the risks that the hazardous material contamination of a site, may pose to children’s health, public health, or the environment, and shall be conducted in a manner that complies with the guidelines published by the Department of Toxic Substances Control entitled “Preliminary Endangerment Assessment: Guidance Manual,” including any amendments that are determined by the Department of Toxic Substances Control to be appropriate to address issues that are unique to schoolsites.

(i) “Proposed schoolsite” means real property acquired or to be acquired or proposed for use as a schoolsite, prior to its occupancy as a school.

(j) “Regulated substance” means any material defined in subdivision (g) of Section 25532 of the Health and Safety Code.

(k) “Release” has the same meaning the term is given in Article 2 (commencing with Section 25310) of Chapter 6.8 of Division 20 of the Health and Safety Code, and includes a release described in subdivision (d) of Section 25321 of the Health and Safety Code.

(l) “Remedial action plan” means a plan approved by the Department of Toxic Substances Control pursuant to Section 25356.1 of the Health and Safety Code.

(m) “State act” means the Carpenter-Presley-Tanner Hazardous Substance Account Act (Chapter 6.8 (commencing with Section 25300) of Division 20 of the Health and Safety Code).

SEC. 2. Section 17210.1 is added to the Education Code, to read:

17210.1. (a) Notwithstanding any other provision of law:



(1) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), the state act applies to schoolsites where naturally occurring hazardous materials are present, regardless of whether there has been a release or there is a threatened release of a hazardous material.

(2) For sites addressed by this article for which school districts elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10), all references in the state act to hazardous substances shall be deemed to include hazardous materials and all references in the state act to public health shall be deemed to include children's health.

(3) All risk assessments conducted by school districts that elect to receive state funds pursuant to Chapter 12.5 (commencing with Section 17070.10) at sites addressed by this article shall include a focus on the risks to children's health posed by a hazardous materials release or threatened release, or the presence of naturally occurring hazardous materials, on the schoolsite.

(4) The response actions selected under this article shall, at a minimum, be protective of children's health, with an ample margin of safety.

(b) In implementing this article, the Department of Toxic Substances Control shall comply with Sections 25358.7 and 25358.7.1 of the Health and Safety Code.

(c) Nothing in this article shall be construed to limit the authority of the Department of Toxic Substances Control or the State Department of Education to take any action otherwise authorized under any other provision of law.

(d) The Department of Toxic Substances Control shall comply with Chapter 6.66 (commencing with Section 25269) of Division 20 of the Health and Safety Code when recovering its costs incurred in carrying out its duties pursuant to this article.

(e) Article 11 (commencing with Section 25220) of Chapter 6.5 of Division 20 of the Health and Safety Code does not apply to schoolsites at which all necessary response actions have been completed.

SEC. 3. Section 17213.1 is added to the Education Code, to read:

17213.1. As a condition of receiving state funding pursuant to Chapter 12.5 (commencing with Section 17070.10) the governing board of a school district shall comply with subdivision (a), and is not required to comply with subdivision (a) of Section 17213, prior to the acquisition of a schoolsite, or if the school district owns or leases a schoolsite, prior to the construction of a project.

(a) Prior to acquiring a schoolsite the governing board shall contract with an environmental assessor to conduct a Phase I environmental assessment of the proposed schoolsite.

(1) The Phase I environmental assessment shall contain one of the following recommendations:

(A) A further investigation of the site is not required.

(B) A preliminary endangerment assessment is needed, including sampling or testing, to determine the following:

(i) If a release of hazardous material has occurred and, if so, the extent of the release.

(ii) If there is the threat of a release of hazardous materials.

(iii) If a naturally occurring hazardous material is present.

(2) If the Phase I environmental assessment concludes that further investigation of the site is not required, the assessment together with all documentation related to the proposed acquisition or use of the proposed schoolsite shall be submitted to the State Department of Education. A school district may submit a Phase I environmental assessment to the State Department of Education prior to its submission of other documentation related to the proposed schoolsite acquisition or use. Within 10 calendar days of receipt of the Phase I environmental assessment, the State Department of Education shall transmit the Phase I environmental assessment to the Department of Toxic Substances Control for its review and approval, which shall be conducted by the Department of Toxic Substances Control within 30 calendar days of its receipt of the assessment. If the Department of Toxic Substances Control concurs with the conclusion of the Phase I environmental assessment that a further investigation of the site is not required, the Department of Toxic Substances Control shall approve the Phase I environmental assessment and shall notify the State Department of Education and the governing board of the school district of the approval.

(3) If the Phase I environmental assessment concludes that a preliminary endangerment assessment is needed, or if the Department of Toxic Substances Control concludes that a preliminary endangerment assessment is needed, the school district shall either contract with an environmental assessor to prepare a preliminary endangerment assessment of the proposed schoolsite and enter into an agreement with the Department of Toxic Substances Control to oversee the preparation of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project. The preliminary endangerment assessment shall contain one of the following conclusions:

(A) A further investigation of the site is not required.

(B) A release of hazardous materials has occurred, and if so, the extent of the release, that there is the threat of a release of hazardous materials, or that a naturally occurring hazardous material is present, or any combination thereof.

(4) The school district shall submit the preliminary endangerment assessment to the Department of Toxic Substances

Control for its review and approval. The school district shall also make the preliminary endangerment assessment available to the public for review for not less than 30 calendar days.

(5) The Department of Toxic Substances Control shall complete its review within 60 calendar days of receipt of the preliminary endangerment assessment and shall either approve or disapprove the preliminary endangerment assessment.

(6) If the Department of Toxic Substances Control disapproves the preliminary endangerment assessment, it shall inform the district of the decision, the basis for the decision, and actions necessary to secure the Department of Toxic Substances Control approval of the preliminary endangerment assessment. The school district shall take actions necessary to secure the approval of the Department of Toxic Substances Control of the preliminary endangerment assessment or elect not to pursue the acquisition or construction project.

(7) If the preliminary endangerment assessment determines that a further investigation of the site is not required and the Department of Toxic Substances Control approves this determination, it shall notify the State Department of Education and the school district of its approval. The school district may then proceed with the acquisition or construction project.

(8) If the preliminary endangerment assessment determines that a release of hazardous material has occurred, that there is the threat of a release of hazardous materials, that a naturally occurring hazardous material is present, or any combination thereof, that requires further investigation, and the Department of Toxic Substances Control approves this determination, the school district may elect not to pursue the acquisition or construction project. If the school district elects to pursue the acquisition or construction project, it shall do all of the following:

(A) Prepare a financial analysis that estimates the cost of response action that will be required at the proposed schoolsite.

(B) Assess the benefits that accrue from using the proposed schoolsite when compared to the use of alternative schoolsites, if any.

(C) Obtain the approval of the State Department of Education that the proposed schoolsite meets the schoolsite selection standards adopted by the State Department of Education pursuant to subdivision (b) of Section 17251.

(D) Evaluate the suitability of the proposed schoolsite in light of the recommended alternative schoolsite locations in order of merit if the school district has requested the assistance of the State Department of Education, based upon the standards of the State Department of Education, pursuant to subdivision (a) of Section 17251.

(9) The school district shall reimburse the Department of Toxic Substances Control for all of the department's response costs.

(b) The costs incurred by the school districts when complying with this section are allowable costs for purposes of an applicant under Chapter 12.5 (commencing with Section 17070.10) of Part 10 and may be reimbursed in accordance with Section 17072.13.

(c) A school district that releases a preliminary endangerment assessment, or information concerning a preliminary endangerment assessment, required by this section, may not be held liable in any action filed against the school district for making the preliminary endangerment assessment available for public review.

SEC. 4. Sections 1 to 3, inclusive, of this act shall not become operative unless and until Assembly Bill 387 of the 1999–2000 Regular Session is chaptered and becomes operative.

